SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOSEPH R. SLIGHTS, III
JUDGE

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June 5, 2012

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Re: ***Taber v. Goodwin, et al.***
C.A. No. N10C-09-132 JRS
Upon State Farm Fire & Casualty Ins. Co.'s Motion for Summary Judgment. **GRANTED.**

Dear Counsel:

As you know, this matter arises from a motor vehicle accident that occurred on September 29, 2009. Plaintiffs, Alisa and John Taber, filed this personal injury action

against the alleged tortfeasor, Kristin Goodwin, and also against their own automobile insurance carrier, State Farm Fire and Casualty Insurance Company ("State Farm"), alleging entitlement to uninsured ("UM") and/or underinsured ("UIM") motorist coverage. The State Farm UM/UIM limits are $25,000 per person/$50,000 per accident. Ms. Goodwin's automobile liability policy provided coverage with identical limits of $25,000 per person/$50,000 per accident. Her liability carrier exhausted its coverage through settlements of claims with other parties injured in the September 29, 2009, accident without including or prorating for the plaintiffs' claims. Having received nothing from the tortfeasor, plaintiffs seek to recover their damages from State Farm.

On April 11, 2012, after oral argument, the Court granted State Farm's motion for summary judgment with regard to plaintiffs' claim for underinsured motorist benefits.[1] The Court gave counsel ten (10) days to explore whether there is any authority to support plaintiffs' proposition that Delaware's uninsured motorist statute, 18 *Del. C.* § 3902(a)(3)b, can be interpreted to provide coverage to plaintiffs based on the exhaustion of Ms. Goodwin's liability insurance prior to the plaintiffs' claims

[1]While perhaps not endorsing the Court's ruling, it is safe to say that plaintiffs acquiesced in this ruling given that the limits of Ms. Goodwin's bodily injury coverage equal the plaintiffs' UIM coverage limits. *See White v. Liberty Ins. Corp.*, 975 A.2d 786, 788 (Del. 2009) ("When the limits of the claimant's UIM coverage and the limits of the tortfeasor's bodily injury coverage are identical, the tortfeasor is not an underinsured motorist within the meaning of section 3902(b)(2).").

being presented for payment. Plaintiffs acknowledge that Ms. Goodwin was not uninsured in the traditional sense given that she maintained liability insurance equal to or greater than the statutorily-mandated limits. But Delaware's statute also expressly provides that an "uninsured vehicle" is "one for which the insuring company denies coverage...."[2] The Court requested that the parties address whether this definition of "uninsured vehicle" should be read more liberally to include instances where a tortfeasor's liability carrier declines to pay a claim because the limits of coverage have been exhausted in settlement of claims presented by other injured parties.

In response to the Court's request for supplemental authority, plaintiffs have pointed the Court to two decisions with similar facts, one from Washington and the other from Minnesota.[3] The dissent in *Strunk* does conclude, as plaintiffs contend, that, when a tortfeasor exhausts his coverage in settlement of other claims before reaching the plaintiff's claims, he is, "[s]o far as [that] plaintiff [is] concerned, [] uninsured...."[4] But the majority in *Strunk* focused on the fact that the tortfeasor did, in fact, maintain liability coverage as required by statute and held, therefore, "that

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[2]*See* 18 *Del. C*. § 3902(a)(3)b.

[3]*See Strunk v. State Farm Mut. Auto. Ins. Co.*, 580 P.2d 622 (Wash. 1978)(dissent); *DiLuzio v. Home Mut. Ins. Co.*, 289 N.W.2d 749 (Minn. 1980).

[4]*Strunk*, 580 P.2d at 628.

there is no room for construing the statute to mean that an insured motorist is insured as to one claimant but ephemerally uninsured when the insurance coverage is exhausted."[5] In *DiLuzio*, the court squarely addressed the legal issue *sub judice* and held that a motorist who maintains the legal limits of liability insurance at the time of an accident cannot, as a matter of law, be deemed "uninsured."[6]

Plaintiffs attempt to distinguish *DiLuzio* on the ground that the Minnesota statutory definition of "uninsured vehicle" is more "narrowly construed" than Delaware's "liberal construction" of the term.[7] While it is true that, unlike the Washington and Minnesota statutes, Delaware's statutory definition of "uninsured vehicle" includes instances where a tortfeasor's liability carrier "denies coverage" and, in that sense, may be broader than its counterparts elsewhere, in this case, like "blue on black," it is a distinction that "doesn't change a thing."[8] There is absolutely no evidence that Ms. Goodwin's liability carrier "denied" or otherwise withheld

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[5]*Id.* at 623 (noting that its holding was in line with "the great majority of courts which have considered this problem.") (citations omitted).

[6]*DiLuzio*, 289 N.W.2d at 750-51 (stating the issue as whether "uninsured motorist coverage [will] apply where the accident vehicles are all legally insured, but the liability limits of the apparent tortfeasor have been exhausted by settlements with other claimants and, as a result, one claimant has not received any compensation from the tortfeasor's liability coverage?").

[7]Pl.'s Supp. Ltr. Mem. at 2.

[8]Kenny Wayne Shepherd, Tia Sillers, Mark Selby, *Blue on Black*, © Universal Music Publishing Group, Sony/ATV Music Publishing LLC, Carlin America Inc. (1997).

available coverage under her automobile liability coverage. Rather, the evidence is clear that the carrier paid out its coverage until the limits were exhausted. That the plaintiffs' claim for a share of the coverage arrived after the coverage was exhausted does not somehow render Ms. Goodwin uninsured.

Finally, the Court notes that the General Assembly has evidenced an appreciation for the fact that there are instances when a motorist may have procured the statutorily-mandated minimum coverage but, nevertheless, should be regarded under the law as "uninsured." Specifically, the UM statute provides that a vehicle shall be deemed uninsured when the liability carrier "becomes insolvent" or, as noted above, "denies coverage."[9] Noticeably absent from this expanded definition of "uninsured vehicle" is the scenario *sub judice* where the tortfeasor's liability coverage has been exhausted prior to the plaintiff's claim having been presented for payment. The Court must conclude, therefore, that the General Assembly did not intend to include this scenario within the statutory definition.[10]

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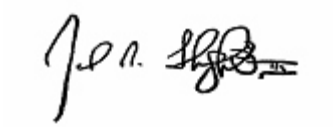
[9] *See* 18 *Del. C.* §3902(A)(3)b.

[10] *See Dambro v. Meyer*, 974 A.2d 121, 138 (Del. 2009) (holding that the absence of language in a complete statutory scheme is evidence that the General Assembly did not intend for the statute to be interpreted as including the missing language). *See also Strunk*, 580 P.2d at 624 (noting that the legislature's inclusion of "insolvent insurers" but omission of exhausted policies from the statutory "uninsured motorist" protection must be deemed intentional and could not be ignored by the court when determining the scope of uninsured motorist coverage).

Based on the foregoing, the Court concludes that plaintiffs are not entitled to uninsured motorist coverage from State Farm. Accordingly, State Farm's motion for summary judgement must be **GRANTED.**

IT IS SO ORDERED.

Very truly yours,



Joseph R. Slights, III